

# SENTENCING COMMISSION MINUTES

<b>Committee</b>	<b>Utah Sentencing Commission</b>
<b>Date</b>	Wednesday, November 3, 2010
<b>Time</b>	Noon – 2p.m.
<b>Location</b>	Utah State Capitol, Senate Bldg., Spruce Room
<b>Members Present</b>	Judge Kevin Allen, Patrick Anderson, Paul Boyden, David Brickey, Rep. Lorie Fowlke, Curt Garner, Marlene Gonzalez, Ron Gordon, Senator Jon Greiner, Dan Maldonado, Judge Paul Maughan, Senator Ben McAdams, Benjamin McMurray, Mark Moffat, Judge Ric Oddone, Judge Gregory Orme, Tom Patterson, Doyle Talbot, Carlene Walker, Tom Brunker for Kirk Torgensen
<b>Members Excused</b>	Kathy Reimherr, Chief Ed Rhoades, Rep. Jennifer Seelig, Sy Snarr, Sheriff James Winder
<b>Staff &amp; Visitors</b>	Staff: Mary Lou Emerson, Jo Lynn Kruse, Jacey Skinner Visitors: Kevin Broadrick, Rep. Becky Edwards, Shannon Halverson, Rob Latham
<b>Agenda Item</b>	<b>Welcome and Approval of Minutes</b>
<b>Notes</b>	Carlene Walker called the meeting to order and welcomed everyone and introduced our newest member Judge Janice Frost. Tom Patterson made a <b>motion</b> to approve the October minutes. Paul Boyden <b>seconded</b> the motion which <b>passed unanimously</b> .
<b>Agenda Item</b>	<b>Death Penalty Procedures Amendments</b>
<b>Notes</b>	<p>Tom Brunker, from the Utah Attorney General's office, discussed proposed changes to Death Penalty Procedures Amendments.</p> <p>Rep. McIlff is sponsoring amendments to three different statutes.</p> <p><b>Death penalty sentencing:</b> The amendments are intended to bring the statutes more in line with what the United States Supreme Court authority requires in death penalty cases. The current statute allows aggravating and mitigating factors considered regarding anything the court considers relevant to be presented in a death penalty sentencing. The amendments limit these factors to those related to the nature and circumstances of the crime, the defendant's character, background, history, mental and physical health or the victim and the impact of the crime on the victim's family and the community.</p> <p><b>Stays of execution:</b> The execution stay amendment is designed to address an issue that arose in the course of the recent Ronnie Lee Gardner case. The plain language of the statute suggests that a petitioner may seek an execution stay merely by filing a post conviction petition or asking for counsel. This is intended to target requests for stays where multiple successive petitions have been filed. This amendment limits the availability of the stay to situations where the petition is not procedurally barred, has potentially meritorious claims, and cannot be reasonably disposed of before the execution date.</p> <p><b>Funding of successive appeals:</b> The statute for funding in death penalty post-conviction cases is designed to address an ongoing dispute between the Attorney General's office and the attorneys who represent persons sentenced to death. The AG's office has generally taken the position that under the plain wording of the existing funding statute, there is no right to funded counsel after the first petition. Opponents have taken the position that paid counsel is afforded for every petition filed. The addition of subsection 6 is the sponsor's attempt at a middle-of-the-road approach: if it is a claim that is being raised in a successive petition that could not have been raised in a prior petition; they would be entitled to funded counsel to litigate that claim.</p> <p>Judge Oddone made the <b>motion</b> to add a meeting on December 1 to further review this legislation. Judge Orme asked to amend the motion to include that we add a December meeting to future scheduling of sentencing commission meetings so that legislation can be discussed. Marlene Gonzalez <b>seconded</b> the motion which <b>passed unanimously</b>.</p>

	Benjamin McMurray made the <b>motion</b> to table discussion of this legislation to the December meeting. The motion was <b>seconded</b> . The motion <b>passed with six persons opposed</b> : David Brickey, Doyle Talbot, Judge Maughan, Judge Frost, Senator Greiner and Rep. Fowlke.
<b>Agenda Item</b>	<b>2010 DUI Report</b>
<b>Notes</b>	Mary Lou Emerson reported findings from the latest DUI Report. Driving Under the Influence related fatalities decreased in calendar year 2009. Utah had the lowest rate of DUI-related fatalities in the nation at 16.4%. The national average was 32.1%. The report lists four bills and one appropriation that passed in the 2010 legislative session and contains a current Utah DUI Sentencing Matrix.
<b>Agenda Item</b>	<b>DUI Penalties for Juveniles</b>
<b>Notes</b>	<p>Two years ago the Legislature passed (SB 272) which changed the penalties for DUI's and alcohol related offenses for adults and juveniles. The changes related to minors were particularly impactful to the criminal justice system. Since that time, we have received a lot of feedback from various stakeholders and the community and Sen. Jenkins indicated that he would be open to proposals. Mary Lou Emerson put together a group that came up with a proposal that Sen. Jenkins approves of and so legislation will be proposed next legislative session to alter the penalties. The bill is not drafted yet, but Sen. Jenkins would like the input of the Sentencing Commission as he crafts the bill.</p> <p>The current state of the law dealing with alcohol related driving offenses for minors is: If a person has any kind of alcohol related driving offense and is under the age of 21, they lose their license until they turn 21. If the person is close to turning 21, then they receive a suspension of 120 days or until 21<sup>st</sup> birthday, whichever is longer. The proposal for this year would alter that sentence and the presumption would be that one would still lose their license until their 21<sup>st</sup> birthday, however, there are two kinds of suspensions that can take place, administrative suspension (placed by the driver's license division) and judicial suspension (which the courts place). The proposal would alter the administrative suspension to 2 years. The presumption for the judicial suspension would still be until the minor turns 21. However, after a 2 year period, if the minor completes certain conditions, they would be able to petition the court to reinstate their license. Those conditions would include that they would comply with <i>all</i> the conditions of the court, that they receive an alcohol assessment and that they comply with all the requirements of that assessment/treatment. They must also obtain a new assessment at the end of that 2 year period to show that they are no longer in need of treatment, have been compliant, have no new offenses during that time, did not drive during that 2 year period and did not consume any alcohol.</p> <p>Rep. Fowlke made the <b>motion</b> to approve the concept of changing the statute to provide methodology to where the 18 to 21 year population is motivated to comply. Paul Boyden <b>seconded</b> the motion which <b>passed unanimously</b>.</p>
<b>Agenda Item</b>	<b>Juvenile Age of Consent Laws</b>
<b>Notes</b>	The age of consent issue for non forcible sex offenses was discussed at the June meeting. Representative Becky Edwards is drafting a bill that would change the age differences that are currently in statute. Proposed changes to the current statute were discussed. Rep. Edwards stated that she will draft some language for the Sentencing Commission to review at the December meeting.
<b>Agenda Item</b>	<b>Statute of Limitations on Predicate Offenses</b>
<b>Notes</b>	This item moved to the December agenda.
<b>Next Meeting</b>	The next meeting will be on Dec. 1, 2010, Utah State Capitol Complex, Senate Bldg., Spruce Room

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ